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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Donald B. Hocker, Circuit Court Judge

COURTNEY S. THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001994

PETITION FOR WRIT OF CERTIORARI

MOLLY M. KEEGAN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred by refusing to find trial counsel ineffective for failing to move to sever petitioner's trial from her co-defendant's trial because the joint trial presented a serious risk that the jury would be prevented from making a reliable judgment about petitioner's guilt and the joint trial greatly prejudiced petitioner by subjecting her to a highly prejudicial opening statement by her co-defendant and allowed her co-defendant to act as a second prosecutor thus reducing the state's burden to prove petitioner's guilt?

STATEMENT

In October of 2013, the Richland County grand jury indicted petitioner for unlawful conduct towards a child and homicide by child abuse. App. 2056-59. On May 19, 2014, petitioner and her co-defendant, Antonio Guinyard, proceeded to a jury trial before the Honorable Robert E. Hood. App. 1. Tracy Pinnock, Adam Ruffin, and Eric Staggs represented petitioner. App. 1. Victori Li and Jessica Eisenhower represented petitioner's co-defendant, Guinyard. App. 1. Luck Campbell, Joanna McDuffie, and Meghan Walker prosecuted the case for the state. App. 1. The jury found petitioner guilty as indicted. App. 1810, l. 18 – 1811, l. 20. Judge Hood imposed a life sentence as to the homicide by child abuse charge and ten years consecutive as to the unlawful conduct towards a child charge. App. 1826, ll. 4-7. Petitioner filed a timely notice of appeal, and her convictions and sentences were ultimately affirmed. App. 1901-1920. On March 28, 2018, the South Carolina Supreme Court denied petitioner's writ of certiorari. App. 1921.

On March 29, 2019, petitioner filed an application for post-conviction relief (PCR). App. 1922-28. On August 29, 2019, the state filed a return, partial motion to dismiss, and motion for more definite statement. App. 1929-36. After several appointed PCR counsels were relieved due to conflicts, Timothy L. Griffith was appointed to represent petitioner. App. 1937-44.

Thereafter, on April 10, 2025, an evidentiary hearing was held before the Honorable Donald B. Hocker. App. 1945-94. Timothy L. Griffith represented petitioner, and Talida Balaj represented the state. App. 1945. On September 10, 2025, Judge Hocker signed an order denying PCR and dismissing petitioner's application with prejudice. App. 1995-2055. Griffith timely served a notice of appeal on September 23, 2025.

This petition follows.

ARGUMENT

The PCR court erred by refusing to find trial counsel ineffective for failing to move to sever petitioner's trial from her co-defendant's trial because the joint trial presented a serious risk that the jury would be prevented from making a reliable judgment about petitioner's guilt and the joint trial greatly prejudiced petitioner by subjecting her to a highly prejudicial opening statement by her co-defendant and allowed her co-defendant to act as a second prosecutor thus reducing the state's burden to prove petitioner's guilt.

Relevant facts

State's case-in-chief

Petitioner and her co-defendant, Robert Antonio Guinyard, were tried jointly for the charges of homicide by child abuse and unlawful conduct towards a child concerning the death of their four-year old son. Petitioner and her co-defendant had several children together and co-defendant stayed with petitioner at her house. App. 973, ll. 23-25; 1599, ll. 24-25. The state presented evidence that petitioner and co-defendant abused the deceased which ultimately led his death on July 1, 2013. Particularly, the state presented a child abuse pediatrician as an expert witness who testified that, in her opinion, the child died from blunt impact trauma. App. 855, ll. 11-15. It was her opinion that the child was abused in the last two months of his life, and the two months of abuse caused his death. App. 867, l. 22 – 868, l. 5. In addition, the state presented an expert witness in forensic pathology, Dr. Amy Druso, who conducted the child's autopsy. App. 1107, ll. 3-5. She opined that the injuries to the deceased were neither the result of natural causes nor an accident and did not stem from a single incident. App. 1133, ll. 11-21; 1141, ll. 14-23. She determined that the cause of death was non-accidental trauma which resulted from constant, persistent, repeated abuse. App. 1143, ll. 1-5.

Several statements were taken from petitioner and her co-defendant concerning the events leading up to their child's death. In the co-defendant's statement, he described the incident as follows: on July 1, 2013, he went to the store to buy beer and cigarettes then returned to the house. App. 915, ll. 1-3. He spoke with petitioner while she was at the hospital to give birth, and she told him she was waiting for a cab to take her home. App. 915, ll. 4-8. When petitioner got home, co-defendant helped her with her bags. App. 915, ll. 9-12. Co-defendant explained that after petitioner returned home with their newborn baby, he laid down with his new baby. App. 915, ll. 13-14. Later, he began cooking dinner with music playing on his phone. App. 915, ll. 14-16. He heard a boom. App. 915, l. 17. After four-to-five minutes, he went to see what the boom was, and petitioner came into the room with the deceased. App. 916, ll. 4-8. Petitioner called the ambulance. App. 916, ll. 11-14. Co-defendant did not know what caused the boom and stated that the deceased seemed fine earlier in the day. App. 917, ll. 2-15. The boom sounded like something hitting the ground. App. 917, ll. 16-18. When the ambulance came, he got in the closet with his new baby because he was scared his baby would be taken away. App. 918, l. 16 – 919, l. 22.

Petitioner gave several statements regarding the death of her four-year-old son. In her first statement given on July 1, 2013, petitioner provided that she got home from the hospital from giving birth and needed to take a shower. App. 1215, ll. 5-6. She said that while she was in the shower she heard a loud boom. App. 1215, ll. 7-8. She found her four-year-old child having what she described as a seizure. App. 1215, ll. 14-15. She brought him to the front room and called 911, who told her how to preform CPR on him. App. 1216, ll. 6-9.

After petitioner was asked to attend a re-enactment, officers advised her that they wanted to go over the autopsy and let her know that this was not an accidental death. App. 1241, ll. 17-

25. Petitioner then modified her statement. App. 1251, ll. 18-19. The second statement was taken on July 2, 2013, and petitioner stated that the first statement was not the truth. App. 1254, ll. 15-23. She provided that when she got home from the hospital, she found her son lying in urine. App. 1255, ll. 4-6. He seemed weak. App. 1255, ll. 6-17. She tried to clean the urine. App. 1255, ll. 17-19. She went to take a shower, and she heard her son crying like he was in pain and getting hit. App. 1255, ll. 22-24. She got out of the shower and found her son on the floor. App. 1255, ll. 24-25. It looked like he was having a seizure. App. 1256, l. 7. She carried him to the front room and called 911. App. 1256, ll. 8-11. Her son told her he had been beaten with a pole. App. 1256, ll. 13-14. As a result of petitioner's second statement, law enforcement executed an additional search warrant because they did not know about the pole during the first search warrant. App. 1264, ll. 17-24. Two poles were collected. App. 1266, ll. 6-8.

Further, both parties testified in their own defenses. App. 1506, ll. 17-18; 1597, ll. 20-23.

Pretrial motions

As relevant, during pretrial, trial counsel moved to sever petitioner's charges and highlighted petitioner's right to a fair trial. App. 172, l. 19 – 174, l. 7. The court ruled that trial counsel failed to show that petitioner's substantive rights were prejudiced by trying the charges together. App. 177, ll. 7-18. Later, the state clarified that there was not a motion made for severance of the defendants. App. 213, ll. 17-25.

Opening statements

The co-defendant's counsel presented his opening statement from the point-of-view of the deceased child. App. 378, ll. 5-8. Co-defendant's counsel used his opening statement to illustrate how petitioner would beat the deceased, the names petitioner called the deceased, and the actions that petitioner took regarding the care for the deceased – all from the deceased child's

perspective. App. 378, l. 20 – 379, l. 17. For example, counsel stated "she would beat me with a cable," "she slapped me in the face," "she called me names." App. 378, l. 20 – 379, l. 17. Each of these statements were followed by counsel, in first-person, stating that "I was a kid." App. 379, ll. 10-13. Co-defendant's counsel recited anecdotes from the deceased about petitioner's treatment of him. App. 379, l. 18 – 380, l. 7. For example, co-defendant's counsel argued the following from the child's point-of-view:

> I tried to love my mom the best I could. I don't know if it was my fault. I don't know if I did a bad job. I don't know if she loved me back. I depended on her for food and clothing and shelter, and if she loved me, she had a funny way of showing it.

App. 380, ll. 7-12. He contrasted this with the co-defendant's treatment of the deceased as follows:

> You know what I can tell you about my dad. I loved my dad. My dad loves me. My dad has never, ever beat me the way my mom beat me. He has never taken a cord to me. He has never taken a shoe to me. He has never beaten me with a rod. He has never beat me the way my mother beat me . . . I loved my dad, and I miss my dad. I miss hanging out with him. I miss going to the parks with him. I miss watching TV with him.
>
> My dad would try to stand up to my mom. They fought. They fought a lot. Sometimes they would just be using their voices, and they would yell at each other. Sometimes he would bug at her if she was attacking me. I remember one time when my mom was chasing me around the house with a cord. My Grandma Gladys was sitting right there. I saw my dad come down. I ran to my dad. My dad balked at my mom and told her to stop hitting this boy.
>
> You know, I've seen my dad put his hands on my mom. I have, but you know what my mom would do? Do you know what her trump card was? She would always call the police. She would call the police on everybody. She called the police on my dad for everything, for drinking one beer, for thinking he is on Facebook talking to another girl.

App. 384, l. 5 – 385, l. 10. Counsel then described a false report petitioner made to the police, and after objection, the court struck the statements about any false statements petitioner may have made to the police. App. 385, l. 11 – 386, l. 2. Counsel argued that petitioner would kick out the co-defendant and others when they tried to stand up for the deceased. App. 386, l. 4 – 387, l. 11. Counsel returned to petitioner's conduct:

> You see, at that point, my mom was untouchable. She was untouchable. She knew how to work the system. If anybody challenged her, she would just kick them out of the house because that's the house she lives in. Her name is on the lease.
>
> If that didn't work, she would just threaten to call the cops. The cops were her number one weapon. Other agencies couldn't help, and family court, well, family court said I belonged to my mom. She had sole custody of me.
>
> If somebody tried to take me away, she would call the cops, tell them I was being kidnapped. My mom knew how to work the system. For the last 15 months of my life, I had to suffer the results of that.

App. 387, l. 23 – 388, l. 12. Co-defendant's counsel then concluded by arguing to the jury that his son "died on July 1st from the hatred exuded from the hands and feet and knees of [petitioner]." App. 388, ll. 17-19.

Following opening statements, petitioner's trial counsel moved for a mistrial based on the mention of petitioner's prior bad acts in the co-defendant's opening statement. App. 394, l. 22 – 395, l. 2.[1] Trial counsel also argued that a curative instruction would be insufficient, given that the improper argument occurred during opening statements. App. 397, ll. 1-6. The court ultimately denied the motion for mistrial because the issue did not rise to the level of manifest necessity and noted that it informed the jury several times that what was said during opening was not evidence. App. 398, ll. 7-18. The court continued that it would reiterate during closing that

[1] The mistrial issue was not raised on direct appeal. *See* App. 1828-1847; 1901-1920.

the arguments made in opening and closing were not evidence and denied the motion. App. 398, ll. 19-23.

Thereafter, during the state's case-in-chief, trial counsel again moved for a mistrial based on "pretty much the combination of everything that has happened, starting with opening statements." App. 810, ll. 9-11. Trial counsel emphasized that, although the jury was instructed to disregard certain statements made by co-defendant's counsel, the jury heard those statements, and they could not be taken away. App. 810, ll. 11-16. The court ultimately denied the motion. App. 812, l. 10.

Trial testimony during state's case-in-chief

Throughout the duration of trial, the co-defendant's counsel continued to elicit evidence concerning petitioner's character from the state's witnesses. During the cross-examination of petitioner's sister Crystal Thompson, the co-defendant elicited testimony that Crystal witnessed petitioner beat the deceased and make nasty comments about the deceased and that the co-defendant would do whatever petitioner wanted him to. App. 504, l. 2 – 505, l. 20. Crystal testified that she told investigators that co-defendant was scared of petitioner. App. 513, ll. 21-24. She agreed that petitioner would get mad when co-defendant did not hit the deceased hard enough. App. 516, ll. 13-19. During the recross-examination of Natalie Thompson, another of petitioner's sisters, co-defendant's counsel asked if Thompson knew "that [co-defendant] did not beat [deceased] the way [petitioner] beat [the deceased]," to which the witness replied "Yes, sir." App. 660, ll. 19-21.

Counsel for the co-defendant questioned Gladys Thompson, petitioner's mother, on cross-examination concerning whether she witnessed petitioner beat the deceased and if she reported the witnessed abuse to the police or Department of Social Services ("DSS"). App. 703,

l. 23 – 706, l. 8. On redirect examination, the state returned to co-defendant's counsel's question concerning whether Gladys reported the abuse to DSS. App. 707, ll. 15-18. Gladys agreed that she tried to stand up for the deceased and was kicked out of the house. App. 707, ll. 19-21.

Then, as relevant, the state presented testimony from Rachel Green, an expert in DNA analysis. App. 1019, ll. 2-5. She testified concerning the results of several DNA swabs that she analyzed. Particularly, she testified that she was given swabs from a white pipe, and the result matched the co-defendant. App. 1048, ll. 16-18.

During the testimony of Latoya Anderson, petitioner's cousin, the state elicited that petitioner told Anderson that she had starved the deceased for eight days without food or water and that she was relieved when he died. App. 1055, l. 7 – 1056, l. 23. On cross-examination, co-defendant's counsel merely had the witness reiterate that testimony. App. 1057, ll. 12-13. Anderson again testified that petitioner told her that she had starved the deceased for eight days and was relieved when he died. App. 1057, ll. 12-17.

Proffered testimony

The court then heard proffered testimony from several witnesses of supposed character evidence that the co-defendant intended to elicit during his case-in-chief. App. 1323, ll. 2-5. The court heard testimony about calls petitioner made to the police about co-defendant, instances where petitioner kicked co-defendant out of petitioner's home, and a stabbing incident. *See generally* App. 1323-1362.

After hearing argument, as relevant, the court determined that kicking someone out was not a bad act and did not analyze kicking out as being a prior bad act under 404(b). App. 1380, ll. 14-16. The court excluded testimony that petitioner called the police on her mother and any testimony that petitioner called the police falsely on the co-defendant. App. 1393, l. 23 – 1394, l.

7. However, the court allowed testimony that petitioner kicked co-defendant out. App. 1394, ll. 9-10. The court also determined that testimony of petitioner kicking out co-defendant while the deceased was in DSS custody would be allowed because it went to a pattern of control by petitioner over co-defendant. App. 1396, ll. 22-25. Trial counsel requested that the testimony from petitioner's mother that petitioner would kick her out of the house when she stood up for the deceased be excluded, however, the court determined that testimony was admissible. App. 1410, l. 9 – 1411, l. 4. The court explained that it allowed the testimony because it went directly to what co-defendant was "trying to make and introduce." App. 1411, ll. 10-12.

In addition, concerning the additional testimony that the co-defendant sought to introduce, the court ruled:

> I have done a 403 analysis. I believe that the probative value of it outweighs the prejudicial effect. Further, Mr. Guinyard has a constitutional right to present a defense in this case, and that is a serious consideration that I am giving and taking into consideration in my ruling, and I believe that that constitutional right to present its defense outweighs any rule of evidence that may come into play in regards to [petitioner]. That is the issue I am considering in making the decision that I made on allowing – on limiting, but allowing this information in, both as to the issues we raised and what we – I don't know what – I don't know what we call it now, but the issues that are going to be the main thrust of Mr. Guinyard's defense and me balancing his constitutional right to present that defense.

App. 1418, l. 21 – 1419, l. 13.

State's case continued

After the state rested its case, trial counsel moved for a directed verdict which was denied. App. 1430, ll. 14-15; 1438, l. 6 – 1442, l. 22.

Codefendant's case-in-chief

The co-defendant first called Charles Robinson, who described an incident where petitioner got angry with him for giving the deceased food. App. 1450, l. 6 – 1452, l. 18. He testified that the deceased was scared of his mom, from what he witnessed, but not scared of his dad. App. 1454, l. 14 – 1455, l. 13. He testified that he witnessed petitioner get mad at co-defendant for not hitting the deceased and witnessed petitioner hit the deceased with a cable cord while co-defendant was not home. App. 1457, l. 4 – 1458, l. 16. Over trial counsel's objection, Robinson described petitioner as the man of the household and testified that petitioner kicked co-defendant out "countless" times. App. 1459, l. 22 – 1460, l. 11.

Then, Gladys Thompson testified that she had witnessed petitioner get mad at other people for giving the deceased water and that co-defendant feared petitioner. App. 1484, l. 21 – 1487, l. 24. She described an incident where petitioner hit the deceased with a cable cord, and co-defendant put his hands on the deceased's back, so the cable cord caught co-defendant's hand. App. 1493, ll. 2-6. She testified that co-defendant told petitioner to stop beating the child, and he was put out again. App. 1493, ll. 10-14. After Gladys concluded her testimony, trial counsel renewed all previous objections to the testimony coming in. App. 1504, ll. 20-22.

Finally, co-defendant testified in his own defense. App. 1506, l. 25. He recalled two times when he saw petitioner beat the deceased. App. 1523, ll. 13-18. He described that he heard his son crying upstairs and saw petitioner with a black cord in her hand. App. 1525, ll. 2-12. He saw his son running and petitioner whipping him. App. 1525, ll. 16-17. He testified that he tried to stand up for his son a lot of times. App. 1526, l. 21. He testified that he always fed his son and that he never laid a hand on him. App. 1528, ll. 16-17; 1529, ll. 9-10. He testified

that petitioner kicked him out numerous times and described an incident where he was kicked out for feeding the deceased more than he needed. App. 1530, l. 15 – 1531, l. 21.

The court then sustained an objection from trial counsel to co-defendant's testimony that he and petitioner would get into physical fights when he stood up to petitioner. App. 1532, l. 24 – 1533, l. 4. Trial counsel moved again for a mistrial based on co-defendant's counsel's introduction of prior bad acts. App. 1533, ll. 9-21. Trial counsel argued that the court had been clear about what co-defendant's counsel could elicit and asserted that "it's gone far enough with the character assassination of [petitioner]." App. 1533, ll. 22-25. She contended that because there was evidence on the record concerning physical altercations between petitioner and co-defendant, which the court had excluded in prior rulings, a mistrial was appropriate based on that testimony. App. 1534, ll. 3-7. The court denied the motion for mistrial but advised co-defendant that he was "*on a tightrope*." App. 1535, ll. 12-19 (emphasis added).

After co-defendant concluded his testimony, he rested his case. App. 1594, l. 20.

Petitioner's case-in-chief

Petitioner testified in her own defense. App. 1597, ll. 16-19. She explained that she was in the hospital from June 29 to July 1, 2013. App. 1599, ll. 2-4. She testified that she did beat her son with a cable cord. App. 1599, ll. 5-20. She explained that she saw the marks on his back and felt bad. App. 1602, ll. 1-7. She testified that she deprived her son of food for eight days. App. 11-25. She testified that when she was in the hospital, the co-defendant called her. App. 1605, l. 24 – 1606, l. 8. She spoke with her son who told her that co-defendant would not stop hitting him with a stick. App. 1606, ll. 1-8. The co-defendant told her he was not beating their son with a stick. App. 1606, ll. 19-23.

When she returned home from the hospital, she found her son "in a puddle of pee from his feet to his shoulder." App. 1609, ll. 3-4. She tried to get her son to his feet, but he fell back on the floor. App. 1610, ll. 1-2. She testified that the co-defendant yanked their son up and grabbed the white pole and beat their son with it. App. 1610, l. 24 – 1611, l. 6. She tried to clean the urine and thought her son was not acting like himself, so she told him to lay down. App. 1611, l. 17 – 1613, l. 10. She explained that the co-defendant made their son stand in the kitchen, and she went to go take a shower. App. 1613, l. 12 – 1614, l. 9. She never took the shower. App. 1614, l. 9. The co-defendant called her, and she went to the kitchen. App. 1614, ll. 11-13. The child passed out and hit his head on the door, and she called 911. App. 1614, l. 25 – 1615, l. 25. The 911 call was played for the jury. App. 1617, ll. 6-7. She further testified that she was not truthful in the prior statements that she gave to law enforcement. App. 1618, l. 24 – 1619, l. 22.

After petitioner's testimony, trial counsel renewed her motion for a directed verdict, on both counts, which the court denied noting that petitioner "essentially confessed to the unlawful conduct towards the child," charge. App. 1661, l. 20 – 1663, l. 3. Trial counsel also renewed her motion for a mistrial based on the defense presented by the co-defendant. App. 1663, ll. 6-8. She argued that it violated petitioner's right to a fair trial as the case had "turned into a character case with nothing but an assassination on [petitioner], based on prior bad acts that were not relevant to this case whatsoever." App. 1663, ll. 11-14. She requested the court grant her mistrial motion based on petitioner's constitutional right to a fair trial, which the trial court denied. App. 1663, ll. 15-20.

Closing arguments

During co-defendant's closing argument, counsel characterized the incident as follows: Petitioner returned from the hospital and saw the urine on the floor. App. 1726, ll. 1-7. She began cleaning the urine when her son came into the room drinking another glass of water. App. 1726, ll. 6-12. Counsel argued:

> That's when she loses it. She grabs a pole. She beats him like she has done so many times before. She turns him over. She breaks his rib. She punches him in the butt causing the final hemorrhages and, you know what, at that point, you probably would see that [the child] is still alive. He is bleeding slowly from the inside. He is losing the final amounts of blood, I guess.

App. 1726, ll. 12-19. Counsel concluded that co-defendant "does not deserve the same fate as the person who beat her child and starved her child to death." App. 1732, ll. 12-13.

In the state's closing argument, it stated "[i]f they just keep pointing the finger at each other, how are you supposed to decide?" App. 1745, ll. 23-24. It concluded by asking the jury to find both responsible for their choices, acts, and treatment of their child. App. 1781, ll. 4-7.

The jury found petitioner guilty as charged. App. 1810, l. 18 – 1811, l. 21. The jury also found co-defendant guilty as charged. App. 1810, ll. 2-10.

Sentencing

Before sentencing, trial counsel renewed her motion for a mistrial. App. 1817, ll. 1-2. She asserted that petitioner suffered a constitutional violation of her right to a fair trial from the co-defendant's presentation of his defense. App. 1817, ll. 2-5. She argued that in weighing the constitutional issues, one was weighed more than the other. App. 1817, ll. 7-8. She contended that petitioner's right to a fair trial was violated based on the character testimony presented against petitioner when her character was never made an issue. App. 1817, ll. 8-14. The court denied the renewed motion for a mistrial. App. 1817, ll. 20-21.

The trial court ultimately imposed a life sentence as to the homicide by child abuse charge and ten years consecutive as to the unlawful conduct towards a child charge. App. 1826, ll. 4-7. As to co-defendant, the court imposed a life sentence as to the homicide by child abuse charge and a ten-year concurrent sentence as to the unlawful conduct towards a child charge. App. 1825, l. 24 – 1826, l. 3.

Evidentiary hearing

During petitioner's post-conviction relief evidentiary hearing, petitioner testified that she did not want to be tried with her co-defendant. App. 1953, ll. 20-22. She explained that her trial counsel told her that her co-defendant had moved for a speedy trial, so she had to go to trial as well. App. 1954, ll. 1-9. She testified that trial counsel explained that it was "out of her hands that they were forcing us into trial." App. 1954, ll. 8-9. She testified that she did tell trial counsel that she did not want to go to trial with her co-defendant. App. 1954, ll. 10-13. Petitioner explained that her trial counsel told her that she did not like that she was going to trial with her co-defendant but said "it was out of her hands because the State was making us – me go to trial with him and the State was making us have a joint trial." App. 1954, l. 23 – 1955, l. 7. On cross-examination, petitioner explained that although she did not want to go to trial at all, if she had no other options, she wanted a separate trial. App. 1960, l. 24 – 1961, l. 2.

Petitioner's trial counsel then testified that her trial strategy was to distance petitioner from the homicide charge and take on the unlawful conduct. App. 1972, ll. 9-12. She further testified that she agreed with petitioner that they were forced into a trial situation. App. 1973, ll. 18-20. She explained that she did not have any notes that she moved to sever petitioner's trial from her co-defendant. App. 1974, ll. 5-12. On cross-examination, trial counsel reaffirmed that she did not see in her notes or in her review of the transcript that she "actually made a motion to

separate [petitioner's] case from Mr. Guinyard's." App. 1976, l. 25 – 1977, l. 9. She testified that she believed that, given the issues that came up during trial and the competing rights to present a defense, "we probably would have been better off by ourselves." App. 1977, ll. 10-17. She continued that she probably should have made the motion for a separate trial, but she did not make that request at petitioner's trial. App. 1977, ll. 18-23. Finally, trial counsel clarified on re-direct examination that her co-counsel made a motion for severance of petitioner's charges and not for severance from her co-defendant. App. 1980, ll. 2-13. She testified that she did not know if the motion would be successful but highlighted the prior allegations of abuse that came up from the co-defendant's lawyer that would not necessarily be admissible against petitioner. App. 1980, l. 20 – 1981, l. 1. She explained that there were a lot of back-and-forth objections "with the competing right to present a defense and then our right to not have our client's character put into evidence." App. 1981, ll. 1-5. Trial counsel concluded that if they had a separate trial, they would not have had those issues which she believed influenced the trial. App. 1981, ll. 6-9.

Mitzi Campbell, a prosecutor for petitioner's case, testified that she did not believe there was a legally supportable basis for a severance motion. App. 1986, l. 22 – 1987, l. 7. She testified that if there had been a legal basis, she would assume a motion would have been made. App. 1987, ll. 2-3. She concluded that "it was totally proper that we tried them together which is what we did." App. 1987, ll. 5-7.

The PCR court's ruling

The PCR court determined that based on a combination of the record and trial counsel's testimony, petitioner failed to show that trial counsel was deficient or that any prejudice resulted from the alleged deficiency. App. 2040. The PCR court thus wrote:

> Trial counsel was not constitutionally ineffective for failing to move to sever Applicant's trial from Guinyard's, as there was no legally supportable basis to sever Applicant's trial. Applicant is not entitled as a matter of right to a severance merely because her and Guinyard's defenses were mutually antagonistic, and where the actions were properly joined. *Smith*, 359 S.C. at 489, 597 S.E.2d at 893.[2] Applicant's and Guinyard's charges arose from the same event, committed in each other's presence, in the same location, at the same time, to the same [child]. These actions were clearly of the 'same general nature' as they were closely related in kind, place and character. *Simmons*, 352 S.C. at 350, 573 S.E.2d at 860.[3]

App. 2040. The PCR court continued that petitioner failed to show that her joint trial compromised a specific trial right or prevented the jury from making a reliable judgment. App. 2040. The court further determined that it was "extremely likely" that the complained bad acts evidence,

> would have been admissible to show intent, absence of mistake or accident, as relevant to establish identity as to the person who fatally abused the child, to establish a pattern of abuse or neglect necessary to prove homicide by child abuse that supported the evidence of a common scheme or plan, and admissible under the *res gestae* theory.

App. 2040-41 (citing *State v. Martucci*, 380 S.C. 232, 252-58, 669 S.E.2d 598, 609-12 (Ct. App. 2008)). The court thus concluded that petitioner "merely provided that a severance would have benefited her, without more." App. 2041. In addition, the PCR court determined that a separate trial would not have been more beneficial to petitioner than a joint trial. App. 2041. The court found that the solicitor *credibly* testified that she recalled that [petitioner's] attorneys wanted a joint trial to point the finger at Guinyard." App. 2041 (emphasis in original). The court stated that had petitioner had a legally supportable basis for severance, and been successful, she would not have benefitted from "Guinyard's constant presence before the jury as a possible scapegoat."

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[2] *See State v. Smith*, 359 S.C. 481, 489, 597 S.E.2d 888, 893 (Ct. App. 2004).

[3] *See State v. Simmons*, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002).

App. 2041. Therefore, the PCR court concluded that petitioner failed to present sufficient evidence to prove either prong of the *Strickland* test, and thus, denied her claim. App. 2041-42.

Discussion

The PCR court erred by refusing to find trial counsel ineffective for failing to move to sever petitioner's trial from her co-defendant's trial because petitioner can demonstrate that she satisfies both prongs of *Strickland.*

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and that the deficient performance prejudiced the petitioner. *Strickland*, 466 U.S. at 687-88. Under the second prong, petitioner must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *Cherry v. State*, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Thompson v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (citing *Rutland v. State*, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016).

Generally, "[c]odefendants in a murder case are not automatically entitled to separate trials." *State v. Barnes*, 421 S.C. 47, 51, 804 S.E.2d 301, 304 (Ct. App. 2017) (citing *State v. Kelsey*, 331 S.C. 50, 73, 502 S.E.2d 63, 75 (1998)). However, co-defendants are entitled to severance when "there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a codefendant's guilt."

Id. (quoting *State v. Dennis*, 337 S.C. 275, 282, 523 S.E.2d 173, 176 (1999)). The denial of a motion for severance will be reversed "when it is reasonably probable the defendant would have received a more favorable outcome had [she] been tried separately." *Id.* (citing *Hughes v. State*, 346 S.C. 554, 559, 552 S.E.2d 315, 317 (2001)).

In *Zafiro v. United States*, 506 U.S. 534 (1993), the United States Supreme Court considered whether Rule 14 of the Federal Rules of Criminal Procedure requires severance as a matter of law when co-defendants present mutually antagonistic defenses. *Id.* at 535. In so deciding, although the United States Supreme Court held that mutually antagonistic defenses are not prejudicial *per se*, the Court explained that severance should be granted where "there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Id.* at 539. Even further, Justice Stevens's concurrence acknowledges that "[j]oinder is problematic in cases involving mutually antagonistic defenses because it may operate to reduce the burden on the prosecutor." *Id.* at 543-44 (J. Stevens, concurring). Particularly, Justice Stevens explains that first, "joinder may introduce what is in effect a second prosecutor into a case, by turning each codefendant into the other's most forceful adversary,"[4] and, second, "joinder may invite a jury

[4] In a footnote, Justice Stevens cites *United States v. Tootick*, 952 F.2d 1078, 1082 (9th Cir. 1991), for the proposition that "Defendants who accuse each other bring the effect of a second prosecutor into the case with respect to their codefendant. In order to zealously represent his client, each codefendant's counsel must do everything possible to convict the other defendant. The existence of this extra prosecutor is particularly troublesome because the defense counsel are not always held to the limitations and standards imposed on the government prosecutor." *Zafiro*, 506 U.S. at 544 & n.3 (J. Stevens, concurring). In the instant case, petitioner's joint trial subjected her to a second prosecutor by way of her co-defendant who took every opportunity to attack petitioner's character, oftentimes more aggressively than the state and without the same procedural safeguards that the state would be subject to. For instance, the trial court expressed concern that the co-defendant had a constitutional right to present his defense, *see* App. 1418, l. 21 – 1419, l. 13, however, by virtue of a joint trial this came at the direct cost of petitioner's case and her own ability to mount a defense.

confront with two defendants, at least one of whom is almost certainly guilty, to convict the defendant who appears the more guilty of the two regardless of whether the prosecutor has proven guilt beyond a reasonable doubt as to that particular defendant." *Id.* at 544.

In addition, a panel of the Fourth Circuit has determined that antagonistic defenses must involve more than just finger pointing. *United States v. Lighty*, 616 F.3d 321, 348 (4th Cir. 2010) (citing *United States v. Najjar*, 300 F.3d 466, 474 (4th Cir. 2002)). The panel explained that "there must be such a stark contrast presented by the defenses that the jury is presented with the proposition that to believe the core of one defense it must disbelieve the core of the other, . . . or that the jury will unjustifiably infer that this conflict alone demonstrates that they are both guilty." *Id.* at 349-50.

The PCR court erred by refusing to find trial counsel ineffective for failing to move for severance from petitioner's co-defendant because the joint trial presented a serious risk that the jury would be prevented from making a reliable judgment about petitioner's guilt and petitioner suffered prejudice as a result of the joint trial. First, trial counsel did not move to sever the co-defendant from petitioner during trial. *See* App. 172, l. 19 – 174, l. 7; 213, ll. 17-25; *see also* App. 1974, ll. 5-12; 1977, ll. 2-23. Notably, during petitioner's evidentiary hearing, trial counsel agreed that she should have moved for a separate trial and highlighted the competing rights to present a defense. App. 1977, ll. 10-23. In addition, trial counsel testified that the prior allegations of abuse that the co-defendant's lawyer raised would not necessarily have been admissible against petitioner and cited petitioner's right to not have her character put in evidence. App. 1980, l. 20 – 1981, l. 1. Given that prior to trial significant trial rights were implicated by a joint trial and there was a serious risk that the jury would be prevented from making a reliable judgment of petitioner's guilt, trial counsel's performance was deficient for

failing to move to sever petitioner's trial from the co-defendant. *Strickland*, 466 U.S. at 687-88; *Barnes*, 421 S.C. at 51, 804 S.E.2d at 304. Nor did counsel identify a strategic decision for neglecting to move to sever petitioner's trial from her co-defendant. The PCR court thus erred by finding that trial counsel was not deficient for failing to move to sever because their defense rose above being mutually antagonistic and exceeded "finger pointing." App. at 2040; *Lighty*, 616 F.3d at 348. Further, while the PCR court is correct that some of the character evidence may have been admissible in a separate trial, *see* App. 2040-41 (citing *Martucci*, 380 S.C. at 252-58, 669 S.E.2d at 609-12), the volume and detail of the evidence admitted during the joint trial was far greater, *see generally* App. 1450-1460, 1484-1504, 1506-1531. Moreover, as trial counsel highlighted, co-defendant's counsel was permitted to introduce petitioner's prior bad acts despite the fact that petitioner did not put her character at issue. App. 1817, ll. 8-14. Therefore, trial counsel's performance in failing to move to sever petitioner's trial from her co-defendant fell below reasonable professional norms. *Strickland*, 466 U.S. at 687-88.

Petitioner was also prejudiced by trial counsel's deficient performance. The result of trial counsel's failure to move to sever petitioner's trial from her co-defendant was being subjected to a second prosecutor through co-defendant's counsel and a reduction of the state's burden to prove petitioner's guilt. For example, the unduly prejudicial opening statement presented by co-defendant's counsel tainted the jury from the inception of the trial and infected the entirety of the trial such that there cannot be confidence in the verdict. *See United States v. Jackson,* 126 F.4th 847, 865 (4th Cir. 2025) ("An invitation urging jurors to identify individually with the victim is an improper Golden Rule closing argument.") (internal quotations and alterations omitted); *see also Von Dohlen v. State*, 360 S.C. 598, 611, 602 S.E.2d 738, 745 (2004) (explaining that other courts, including our Court of Appeals, have uniformly condemned and

prohibited golden rule arguments) and citing *Hayes v. State*, 236 Ga. App. 617, 619, 512 S.E.2d 294, 297 (Ga. Ct. App. 1999) (explaining that an improper golden rule argument asks jurors to consider a case, not objectively as fair and impartial jurors, but rather from biased, subjective standpoint of the litigant or of the victim). The opening statement made by co-defendant's counsel far exceeded "finger pointing" and far surpassed the co-defendant merely accusing petitioner of the charged crime. *Lighty*, 616 F.3d at 348; *see also State v. Walker*, 366 S.C. 643, 657, 623 S.E.2d 122, 129 (Ct. App. 2005) ("The rule allowing joint trials is not impugned simply because the codefendants may present evidence accusing each other of the crime."). Instead, the highly inflammatory opening statement, given from the perspective of the deceased child, in the first-person, served only as an assassination of petitioner's character. *See generally* App. 378-388; *see also State v. Brown*, 277 S.C. 203, 204, 284 S.E.2d 777, 778 (1981) ("An opening statement serves to inform the jury of the general nature of the action and defenses involved in a case so they will be better prepared to understand the evidence presented."). By function of a joint trial, petitioner was in effect tried not only by the state but also by her co-defendant who became her most forceful adversary. *See Zafiro*, 506 U.S. at 544 (J. Stevens, concurring); *see also Tootick*, 952 F.2d at 1082.

Perhaps most offensively, the opening statement given by co-defendant's counsel served only to appeal to the personal biases of the jury and to arouse their passion or prejudice. *See e.g., Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010) ("A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury.")). The opening statement capitalized on the already sensitive nature of the charged offenses for which petitioner stood trial by personifying the deceased child, questioning whether petitioner loved her child, and describing the suffered abuse through the lens of the deceased. *See generally* App. 378-88.

There was no purpose other than to inflame the jury. In addition, the opening statement referenced calls to the police that co-defendant's counsel argued petitioner made against co-defendant even though the trial court later excluded testimony that petitioner called the police falsely on the co-defendant from being admitted during trail. App. 385, ll. 4-10; App. 1393, l. 23 – 1394, l. 7. While the court advised the jury that counsel's arguments were not evidence, the impact of counsel's opening statement could neither be undone nor unheard by the jury and could not be cured by the trial court's instruction to the jury. Therefore, there is a reasonable probability that had trial counsel moved to sever petitioner's trial from her co-defendant, the outcome of the trial would have been different. *Thompson*, 423 S.C. at 245, 814 S.E.2d at 492; *Rutland*, 415 S.C. at 577, 785 S.E.2d at 353. It is without question that a separate trial would ensure that petitioner would not be subjected to co-defendant's inflammatory opening state which made petitioner's character and prior bad acts the centerpiece of its case, leaving petitioner not just to defend herself against the state but also against her co-defendant.

Moreover, petitioner was further prejudiced by the joint trial because it allowed co-defendant's counsel to highlight and reiterate the most damaging evidence that the state elicited. App. 1055, l. 7 – 1056, l. 23; 1057, ll. 12-17. Further, despite sustained objections and several motions for mistrials, the jury was allowed to hear extensive evidence of petitioner's character, including testimony concerning petitioner kicking co-defendant out of the house, prior allegations of abuse by petitioner against the deceased child, co-defendant's fear of petitioner, and co-defendant's own testimony reiterating allegations of abuse against the child and that he was kicked out of the house when he tried to help the deceased child. *See generally* App. 1450-60; 1484-93; 1506-31. For example, during the co-defendant's testimony, he began explaining the physical fights he and petitioner would get into when he stood up to petitioner. App. 1532, l.

24 – 1533, l. 6. In sustaining the objection and overruling petitioner's motion for mistrial, the trial court advised the co-defendants counsel that he was "on a tightrope," with regard to the testimony he was eliciting from the co-defendant. App. 1535, l. 16. The court's advisement to counsel highlights that the focus by the co-defendant to erode petitioner's character permeated the trial. There is a reasonable probability that but for counsel's failure to move to sever petitioner's trial from her co-defendant, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-88. Thus, because petitioner can demonstrate extensive prejudice stemming from her joint trial with co-defendant, the PCR court erred by refusing to grant relief. *See Hughes*, 346 S.C. at 561, 552 S.E.2d at 318 (explaining that the Hughes court did not "imply that a defendant jointly tried with a [co-defendant] would never be entitled to PCR," and instead "if a defendant is able to demonstrate prejudice from such a joint trial, PCR would be warranted.") (footnote omitted).

In sum, the PCR court erred by refusing to find trial counsel ineffective for failing to move to sever petitioner from her co-defendant as such a failure was deficient performance which greatly prejudiced petitioner. *Strickland*, 466 U.S. at 687-88; App. 2040-42.

CONCLUSION

Therefore, based on the foregoing argument, this Court should grant the petition for writ of certiorari to allow full briefing on the issue.

Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of March, 2026.